

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

SUSAN FELIX and M. J. FEINER,

Appellants,

v.

CITY OF SEATTLE and TIMOTHY A.
JOSLIN, SR.,

Respondents.

SHB No. 87-36

ORDER OF DISMISSAL

The request for dismissal of this case by Timothy A. Joslin, Sr., came on for hearing before the Shorelines Hearings Board, Wick Dufford (Presiding), Lawrence J. Faulk, Judith A. Bendor, and Nancy Burnett, on October 22, 1987.

Timothy A. Joslin, Sr., represented himself. The City of Seattle was represented by Michael Monroe, Assistant City Attorney. Jeffrey M. Eustis, Attorney at Law, represented appellants Felix and Feiner. The argument was recorded.

On September 14, 1987, the Board received a letter from respondent Joslin, the permittee of the substantial development permit in question, objecting to the appeal herein on the grounds that it was

1 not timely filed. Respondents, through counsel opposed dismissal by a
2 responsive filing received on September 25, 1987. Mr. Joslin renewed
3 his objections by a subsequent submission received September 29, 1987.

4 The Board having considered the written and oral contentions of
5 the parties and having reviewed the files and records herein and being
6 otherwise fully advised decides as follows:

7 FINDINGS

8 1. The City of Seattle issued a shoreline substantial development
9 permit to Timothy Joslin for the construction of a four-story,
10 seven-unit apartment building on Puget Sound.

11 Pursuant to RCW 90.58.180(1) an appeal of such an action must be
12 filed at the Shorelines Hearings Board "within thirty days of the date
13 of filing as defined in RCW 90.58.140(6) as now or hereafter amended."

14 The referenced subsection of RCW 90.58.140 defines "date of
15 filing" for a substantial development permit as "the date of actual
16 receipt" of the permit by the Department of Ecology. See also WAC
17 173-14-090.

18 2. The "date of filing" with the Department of Ecology in the
19 instant case was July 16, 1987.

20 3. Appellants herein initially filed an appeal of the City's
21 decision on August 14, 1987. However, this filing was made not with
22 the Shorelines Hearings Board, but with Seattle's Office of Hearing
23 Examiner. By letter dated August 17, 1987, the Hearing Examiner
24

1 returned the appeal, advising that it should have been filed with the
2 Shorelines Hearings Board.

3 Thereafter, on August 19, 1987, appellants lodged their appeal
4 with this Board. By that time more than 30 days had elapsed from the
5 "date of filing."

6 4. That the 30th day fell on a Saturday is of no assistance to
7 appellants, because their appeal was not filed with this Board until
8 the following Wednesday.

9 5. Appellants assert that their appeal should be entertained by
10 the Board and that the late filing should be excused because the
11 instructions given by the City about appealing its action were
12 confusing. Under the circumstances they contend that the initial
13 misfiling of their appeal with the City's Office of Hearing Examiner
14 should be regarded as a timely appeal to the Board.

15 6. The City made notice of its decision on what appears to be a
16 standard form, with certain specific information filled in. This form
17 gives general instructions on where to appeal various land use permit
18 decisions. It is not a model of clarity.

19 However, it does contain information on where to find out about
20 appealing shoreline decisions. In its boiler plate the notice states:

21 For further information on how to appeal
22 shoreline decisions to the Washington State
23 Shoreline Hearings Board, contact the Master
24 Use Information and Notification Center,
25 625-5200. For information on Shoreline
Hearings Board hearings or to learn the status
of an appeal, contact the Board directly in
Olympia at 459-6329.

1 The record does not disclose that either of these informational sources
2 were used by appellants.

3 Moreover, in the specific information provided on the notice of
4 decision issued in this case, the decision made is identified as a
5 "shoreline substantial development permit" and the following is
6 expressly set forth as the last entry on the form:

7 This decision is appealable to the Washington
8 State Shorelines Hearings Board until at least
9 August 16, 1987.

10 7. The appellants' appeal to this Board is subject to the
11 certification requirement of RCW 90.58.180(1). Under that subsection,
12 the Department of Ecology and the Attorney General's Office must screen
13 shoreline appeals to determine "if it appears . . . that the requestor
14 has valid reasons to seek review." Unless they so certify, the Board
15 may not review the appealed decision.

16 Here, the Department of Ecology and Attorney General's Office
17 certified the appeal on September 10, 1987. In the certification
18 document, the screening agencies acknowledge that the appeal was not
19 filed in a timely manner, but state that the appeal is accepted by them
20 because "the appellants received unclear instructions as to the proper
21 appeal procedures and made a good faith effort to comply with these
22 procedures."

23 DECISION

24 We conclude that the request for dismissal of this appeal must be
25 granted. We do so with some reluctance because we agree that the City

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1 of Seattle's notice of decision is confusing. We urge the City to
2 review the form it uses with an eye toward eliminating the kind of
3 confusion which occurred here.

4 Nonetheless, we do not regard the City's notice as impenetrable.
5 On careful reading it imparts correct information as to where and when
6 to appeal the decision in question. Further, it provides telephone
7 numbers to call should clarification be needed.

8 Our decision, however, is not based on a balancing of the equities
9 of the situation. This Board has, over time, consistently treated the
10 30-day period from the "date of filing" as a time limit which must be
11 met for its jurisdiction to attach. See e.g., Flynn v. Kirkland, SHB
12 No. 78-30 (1978). We adhere to that approach here.

13 We find no hint in the Shoreline Management Act that the Board was
14 given authority to carve out exceptions to the statutory time limit
15 when it might find non-compliance "excusable" or when "good faith
16 efforts" are shown; e.g., compare the unemployment compensation statute
17 which expressly sets forth a "good cause" exception to the appeal
18 period. RCW 50.32.075; Rasmussen v. Department of Employment Security,
19 98 Wn.2d 846, 658 P.2d 1240 (1983).

20 Furthermore, we perceive policy reasons for following the "bright
21 line" approach, treating all potential appellants the same with respect
22 to meeting the 30-day limit. The Shoreline Management Act prohibits
23 any construction in pursuit of a permitted project until the appeal
24 period

1 has run. This statutory "stay" is extended until proceedings before
2 the Board are terminated if the proceedings were initiated within
3 thirty days from the date of filing. RCW 90.58.140(5).
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5 Appellants who timely file, thus, have the ability to stop a
6 permitted project dead in its tracks for a considerable period of time
7 without the posting of a bond or any action other than filing the
8 appeal with this Board.


9 We do not believe that the Board was implicitly empowered to
10 multiply the uncertainties for sponsors of locally permitted projects
11 by, in effect, extending the statutory appeal period.
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1 NOW THEREFORE, the request for dismissal is granted. This appeal
2 is hereby dismissed.

3 DONE this 5th day of November, 1987.
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5 SHORELINES HEARINGS BOARD

6 
7 WICK DUFFORD, Presiding

8  11/5/87
9 LAWRENCE J. FAULK, Member

10 
11 JUDITH A. BENDOR, Member

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13 NANCY BURNETT, Member
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